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VIA HAND DELIVERY

September 13, 2002

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
The Portals
TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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SEP 13 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
In the Matter of Verizon Telephone Companies Tariff FCC Nos. 1 & 11,
Transmittal No. 232; CC Docket No. 01-337

Dear Ms. Dortch:

On September 12, 2002, Dave Baker, EarthLink Vice President for Law and Public Policy, and the undersigned met with the following staff of the Pricing Policy Division of the Commission's Wireline Competition Bureau: Judy Nitsche, Chris Barnekov, Deena Shetler, Margaret Dailey, Jay Atkinson, Jim Lichford, Vienna Jordan, and Gene Gold. The subject of the meeting was Verizon's Infospeed DSL service tariff offering and Verizon's pending tariff for its PARTS service which is the subject of Verizon's Transmittal No. 232.

After generally describing its business, including its broadband subscriber base, EarthLink referenced its August 30, 2002 letter requesting an FCC investigation of Verizon DSL pricing in connection with Transmittal No. 232. EarthLink proceeded to urge the Commission to designate for investigation pursuant to its September 3, 2002 Order EarthLink's claims that (1) the PARTS tariff unreasonably discriminates against non-collocated DSL customers, and (2) the recurring rates for Verizon's Infospeed offering are unreasonable, in light of cost data recently submitted in connection with the PARTS tariff. EarthLink added that if the designation order could not include the second of these claims, the FCC should, on its own motion, open an investigation to resolve that claim under Section 205 of the Act.

During the meeting, EarthLink made the following points:

1. *The two services are essentially the same.* Both PARTS PVC and Infospeed carry the signal from the NID through the DSLAM to the end-user CO. Under both

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services, the customer must separately purchase Verizon's ATM services to transport the signal from the CO to the customer serving wire center or PoP. Both provide service for end-users served by remote terminals (Infospeed also serves non-remote terminal end-users; PARTS PVC is exclusive to remote terminal service.)

2. *The recurring direct cost to Verizon of PARTS PVC, and thus Infospeed, are approximately \$14.61.* PARTS Worksheet 1 sets the direct monthly cost at \$14.61 for the basic service. Since the two services are essentially the same, the cost for Infospeed should be approximately the same.
3. *But the recurring prices for the two services are very different.* For the basic service (768 kbps/128 kbps) with no term or volume commitments, PARTS PVC is tariffed at \$21/month; Infospeed is \$39.95/month. Even with a million-line, five-year commitment, Infospeed is \$29.95/month.
4. *The Infospeed recurring price is therefore unreasonable.* Verizon set the recurring price for PARTS PVC at 144% of cost. Using the PARTS PVC cost as a proxy for the Infospeed cost (because the services are essentially the same), it appears that Verizon set recurring prices for Infospeed at 273% of cost for the month-to-month plan, and 205% of cost for the cheapest, million-line, five-year commitment plan.
5. *Pricing for Infospeed and PARTS PVC is discriminatory.* Verizon is charging widely different prices for the same service under two different names. Verizon is also restricting ISPs to Infospeed, which carries the higher recurring rate.
6. *The inflated rates charged to ISPs for Infospeed are competitively harmful.* Wholesale rates well above cost, such as those for Infospeed, greatly reduce or eliminate non-affiliated ISPs' margins. While the same may be true of an affiliated ISP, its reduced margin is offset by the increased margins of the affiliated carrier selling the wholesale DSL service, which directly or indirectly subsidizes the affiliated ISP, thus eliminating the need to protect margins. Non-affiliated ISPs are squeezed competitively by the subsidized affiliated ISP.
7. *EarthLink is not requesting the FCC to reconsider the Verizon waiver order (released June 12, 2002) on price cap filings.* The order temporarily waived the requirement that Verizon file cost-justifying data. It did not waive the requirement that Verizon's rates be just and reasonable.

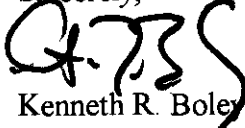
There was significant discussion at the meeting as to what exactly is included in the Infospeed service, and to what extent the services are, in fact, the same, or at least sufficiently

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comparable to draw conclusions about Infospeed from the PARTS PVC cost justification data. Furthermore, there was some dispute over whether Infospeed provides service to end-users serviced through remote terminals. EarthLink expressed its understanding that it did. Finally, there was discussion about whether Verizon's ability to charge inflated wholesale DSL rates and subsidize its affiliated ISP, thereby harming competing ISPs (described in item 6 above), should be raised in connection with CC Docket 01-337, the "Dominant/Non-Dominant" proceeding.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, 4 copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

Kenneth R. Boley
Counsel for EarthLink, Inc.

CC: Judy Nitsche
Chris Barnekov
Deena Shetler
Margaret Dailey
Jay Atkinson
Jim Lichford
Vienna Jordan
Gene Gold